### STATE BAR ASSOCIATION.

ADDRESS BY CHARLES A. GARDINER ON THE QUESTION OF EXPANSION.

THE CONSTITUTIONALITY AND VALIDITY OF THE ADMINISTRATION'S POLICY DE-

# FENDED-OTHER PAPERS.

Albany, Jan 18.-The State Bar Association opened its second day's session at 10:30 o'clock. Charles A. Gardiner, of New-York, was the first speaker. His address was on "Our Right to Acquire and Hold Foreign Territory." It fol-

The sovereign nations of the world possess equal rights and equal powers. Their equality is perfect, their independence absolute. Hetween them national constitutions are unknown. In external or international relations the United States is assumed

their independence absolute. Hetween them national constitutions are unknown. In external or international relations the United States is assumed by all other sovereignties to possess absolute powers, unrestrained by constitutional limitations. That assumption is correct, based upon the fundamental canen of the law of nations. The United States may ratify its proposed treaty with Spain, and no other nation has any right to question its political or constitutional authority to do so.

Are there, therefore, no limitations on our National sovereignty? During the Colonial period, as Mr. Justice Iredell explained, the British monarchs were sovereign, and the colonists their subjects; but after the Revolution sovereignty passed to and vested in the people (3 Dall., 23), and there it remains vested to-day, in the seventy-five million American citizens, not as individuals but as a political and sovereign unit. Historically this unit preceded both State and Federal constitutions. It created them. The Declaration of Independence, the supreme act of sovereignty, gave birth to the Nation, while the Constitution gave form to its government. The Constitution is but a law of the people distributing, not creating, sovereign powers among the several organs of sovereignty. A vast residuum of power, not disposed of by the Constitution, is reserved to the States, respectively, or to the people. (Art. X.). Although the distinction is not expressly made in the Constitution, the consensus of decisions for a century, as well as the logic of the situation, makes the following deductions irresistible: In all internal and domestic relations the States possess the sovereignty originally vested in the people. (Art. X.). Although the distinction is not expressly made in the Constitution, the consensus of decisions for a century, as well as the logic of the situation, makes the following deductions irresistible: In all internal and domestic relations the States possess the sovereignty originally vested in the people. (Art. X.) and the people

ing the sovereign people, is duly constituted agent and trustee to exercise such sovereignty. The States have no National powers whatever.

Early in the century Chief Justice Marshall announced as a proposition which should "command the universal assent of mankind" that the Government of the Union "is supreme within its sphere of action.

It is the Government of all; its powers are delegated by all; it represents all, and acts for all" (4 Wheat, 465). Chief Justice Chase reiterated this sentiment: "The people of the United States constitute one nation under one government, and this government within the scope of its powers is supreme "(7 Wall., 76). The idea was elaborated by Mr. Justice Bradley: "The United States is not only a government.

It is invested with power over all the foreign relations of the country, war, peace and negotiations and intercourse with other nations, all which are forbidden to the State Governments" (12 Wall., 565). In the Chinese exclusion cases the Court held: "The United States in their relation to foreign countries are one nation invested with powers which belong to independent nations" (130 U. S., 604). And Mr. Justice Lamar in the Neagle case used this language: "The Federal Government is the exclusive representative and embodiment of the entire sovereignty of the Nation in its united character.

In our intercourse with foreign nations, States and State governments and the internal adjustment of Federal power with its complex system of checks and balances are unknown, and the only authority those nations are permitted to deal with its the authority of the Nation as a unit" (135 U. S., 84).

RIGHT TO HOLD AND GOVERN IT.

II. Right to Hold and Govern.—Possessing the right to acquire territory, it follows as an inevitable consequence that we also possess the right to hold, and hence to govern it. (Story, Const., Sec. 1.324.) In 1810 Chief Justice Marshall announced these views. "The power of governing and of legislating for a territory is the inevitable consequence of the right to acquire and to hold territory." (6 Cranch. 338.) "And whatever may be the source whence the power is derived." he said in a later case, "the possession of it is unquestioned." (1 Pet. 542.) "It would be absurd," was the opinion of Mr. Justice Bradley, "to hold that the United States has power to acquire territory and no power to govern it when acquired." (136 U. S., 42-44.) Mr. Justice Matthews said of our right to hold and govern: "That question is, we think, no longer open to discussion. It has passed beyond the stage of controversy into final judgment." (114 U. S., 44.) And Mr. Justice Gray, in a recent case, thus summarized the law. "The United States having rightfully acquired the territories. have the entire dominion and sovereignty. National and municipal, Federal and State, over all the territories." The right to acquire being a primary attribute of The right to acquire being a primary attribute of

The right to acquire being a primary attribute of sovereignty, and the right to hold and govern being ancillary thereto, it follows that wherever our sovereignty extends, there our right to acquire, and hence to hold and govern, extends also. The situs of the territory is mmaterial: it may be contiguous or remote, on the American Continent or in foreign lands. Our abstract right to acquire and hold is as picnary and sovereign in the Philippines as in Algaka or Arizona. hold is as plenary and so as in Alaska or Arizona.

# POLITICAL QUESTIONS.

POLITICAL QUESTIONS.

III. All Problems of Expansion. Political, Not Constitutional or Judicial.—Before considering the concrete application of these rights, it is important to determine their precise governmental character. Are they political or judicial? The public mind is so confused on all problems of expansion that it bases confused on all problems of expansion that it bases confused on the constitution. Political questions differ from judicial in that none but the sovereigns can determine them. A sovereign decides by his own will, sie volo, sie jubeo. A court decides according to the law prescribed by the sovereign. Political power is that which a sovereign authority: judicial power is that which a sovereign grants to its own courts. Political power is sovereign and limited.

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tive and limited.

The "maintenance and extension of our National dominion" is a political, and not a sudicial, problem. The reasons are thus stated: "The President lem. The reasons are thus stated: "The President and Congress are vested with all the responsibility and powers of the Government for the determination of questions as to the maintenance and extension of our National dominion. It is not the province of the courts to participate in the discussion or decision of these questions for they are of a political nature, and not judicial. Congress and the President having assumed jurisdiction and sovereignty.

all the people and courts of the country are bound by such governmental acts." (5)

country are bound by such governmental acts." (50 Ped. Rep., 110.)

The acquisition of territory by treaty is, therefore, political and non-judicial. The Senate can ratify, reject or medity any treaty. There is no implication upon its treaty-making powers. It modified a draft treaty with England in 1796, with France in a draft treaty with England in 1796, with France in 1801, with Norway and Sweden in 1818, with Mexico in 1848 and with Bolivia in 1862. It rejected many, among them the treaty of arbitration with England in 1866, and many it has ratified without change. The action of the President and Congress will be final as to all international and political obases of the pending treaty. If a court could modify or annul a treaty in these respects it could as suggestined by Mr. Justice Miller. "annul declarations of war, suspend the levy of armies and become a great international arbitre, instead of a court of justice for the administration of the laws of the lutted State." (I Woolw. 1862) and referring particularly to the acquisition of new territory by treaty, the Supreme Court said. "This court has solemnly and repeatedly declared that this was a solemnly and repeatedly declared that this was a

matter peculiarly belonging to the cognizance of the legislative and executive departments, and that the propriety of their determination was not within the province of the judiciary to contravene or question." (9 How., IS.)

All questions also incident to acquisition and preliminary to government—whether the territory be contiguous or remote; whether our tenure

All questions also incident to acquisition and preliminary to government—whether the territory be contiguous or remote; whether our tenure be temporary or permanent; whether we keep, or give back, or sell, or lease; these are all political problems intrusted without appeal to the discretion of Congress (14 Pet., 538; 9 How., 242; 18 Wall., 220; 101 U. S., 132).

### CONSTITUTION NOT INVOLVED.

The same is emphatically true of the government of new territory. It belongs, as the Supreme Court has ruled, "primarily to Congress, and secondarily to such agencies as Congress may establish" (18 Wall., 319); "Territories are not organized under wall, 319; "Territories are not organized under the Constitution, . . . but are creations exclusively of the legislative department and subject to its supervision and control" (9 How., 242); "Congress has full and complete legislative authority over the people of the Territories and all the departments of the Territorial Governments" (101 U. S., 132); in ordaining territorial governments "full the discretion which belongs to legislative power is vested in Congress" (14 U. S., 46); also, "In a Territory all the functions of government are within the legislative jurisdiction of Congress" (35 Fed. R., 459); and finally, all territorial powers "are created by Congress" and all territorial acts "are subject to Congressional supervision" (123 U. S., 446.)

Hence, again, whether our new territory be organized or unorganized, governed directly or Indirectly, temporarily or permanently; whether the Constitution and Federal statutes be made operative, or new rules and regulations be enacted—these and all other problems of government are political and not judicial.

IV. Concrete Application of Rights.—Extent and Means of Exercise.—Our abstract rights and their governmental character being thus determined, we will next consider their concrete application, and the extent to which and the means by which they can be exercised.

The power to rule and regulate. Both powers are granted and are unlimited (8 Wheat, 589). Congress can "dispose of" Porto Rico or the Philippines as unreservedly as it can dispose of personal property, the prizes, for example, captured in the late war (14 Pet., 538). We may cede the Philippines to the inhabitants thereof, as a gift, or on such terms as may be agreed. We may let them to the inhabitants thereof, as a gift, or on such terms as may be agreed. We may let them to tennants, as China is leasing its ports to European Powers. We may sell them to any bidder, England, Germany, Japan, as Russia sold Alaska to Us.

The right to acquire territory being a primary attribute of sovereignty might have en the Constitution, . . . but are creations exclusively of the legislative department and subject to its

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local government, are usually not subject to our Constitution and laws, and are ruled directly by Constress. Such are Alaska and Indian Territory. Territories, dependencies and provinces are in our jurisprudence practically synonymous terms. "Territories" in legal contemplation are organized or unorganized dependencies or provinces. The phrase has been incorporated in our political and judicial history for a century, and if we should destinate Hawaii. Cuba, Porto Rico and the Philippines as "territories," it would be more in harmony with American institutions than to style them "colonies."

# CONGRESS HAS ABSOLUTE POWER OVER

TERRITORIES. Congress has the same power over its public domain as over any other property belonging to the United States (29 Fed. R. 205; 14 Pet., 557; 18 Wall., Congress has the Congress has the States (29 Fed. R. 205: 14 Pet., 537; 18 Wall., \$19: 136 U. S., 42). "This power," said the Supreme Court, "is vested in Congress without limitation, and has been considered the foundation upon which Territorial governments rest" (14 Pet., 537). The Supreme Court early announced the comprehensive principle that "Territories are not organized under the Constitution nor subject to its complex distribution of the powers of government as the organic law, but are the creations exclusively of the legislative department and subject to its supervision and control" (9 How., 242). Chief Justice Waite, sustaining this power of Congress said: "All territory within the jurisdiction of the United States not included in any State must, necessarily, be governed by or under the authority of Congress. . It has full and complete legislative authority over the propie of the Territories and all the departments of the Territories and all the departments of the Territories all the discretion which belongs to the legislative power is vested in Congress (114 U. S., 44).

"The power of Congress over all Territories is general and plenary," said Mr. Justice Bradley (136 U. S., 42). And the Court, summarizing the whole matter, announced this opinion through Mr. Justice Erewer: "A territory is a political community, organized by Congress, all whose powers are created by Congress, and whose powers are created by Congress, and all whose acts are subject to Congressional supervision" (130 U. S., 446). Under this full and comprehensive authority the form of local civil government first compels attenform the discretion which belongs to legislative power is vested in Congress, and the Supreme Court, and that extends . . to determining by law from time to time the form of the local government hen of the local government in a particular Territory" (14 U. S., 44). "There can be no question." said Judge Dawson, "of the Authority of Congress to enact such forms of Territorial government within the Territories as it m

# MAY RULE FROM WASHINGTON

All the functions of government being within leg-All the functions of government being within legislative discretion, Congress may exercise them directly from Washington, or indirectly through organized local rule. (86 Fed. R., 459: 18 Wail., 319: 114 U. S., 44). It may, as succinctly put by Judge Morrow, "legislate in accordance with the separate needs of each locality, and vary its regulations to meet the conditions and circumstances of the peomet the conditions and circumstances of the peomet." (86 Fed. R., 459.) In the language of Chief pie." (86 Fed. R., 459.) In the language of Chief Justice Waite, "Congress may not only abrogate laws of the Territorial Legislatures, but it may laws of the Territorial Legislatures it waited in the congress, with few exceptions, has not true that Congress, with few exceptions, has not true that Congress, with few exceptions, has not true that Congress, with few exceptions, has not directly enacted the municipal laws of Territories, but this is a matter of legislative discretion, not a

Constitutional obligation, and Congress may, if it chooses, enact at Washington all municipal laws for Hawaii, Porto Rico and the Philippines, as it does now for the District of Columbia and Alaska. (152 U. S., 48; 10 U. S., 133; 114 U. S., 44; 1 Deady. 31; 86 Fed. Rep., 459.)

### OUR FORMER COLONIES.

Under the ordinance of 1787, as subsequently modified, the Territories of Ohio, Mississippi, Indiana, Michigan and Illinois had a Governor, judges and Council appointed or selected by Congress; governments as purely colonial, except for a delegate

ernments as purely colonial, except for a delegate in Congress, as any to-day maintained by England, Germany or France.

Orleans Territory, a part of the Louislana Purchase, existed from 1908 to 1811, and furnished another example of colonial administration—a local Legislature, a Governor exercising the functions of the old Spanish Intendant, a justiciary administering the old Spanish Code—all appointed by the President; Federal statutes operative only in criminal cases, and a separate port law for New-Orleans (2 How., 344). Of it Nicholson, of Delaware, said: "It is in the nature of a colony whose commerce may be regulated without any reference to the Union." "It was a startling bill," remarks Benton, "continuing the existing Spanish government, putting the President in the place of the King of Spain, putting all the Territorial officers in the place of the King's officers, and placing the appointment of all these officers in the President alone." Yet the validity of the Orleans government was repeatedly sustained by the Supreme Court (2 How., 344; How., 589; 13 Wall., 436). In many respects it might furnish an acceptable model of civil rule by Congress for Porto Rico, the Philippines, and even Hawaii.

ALASKA NOW A COLONY.

### ALASKA NOW A COLONY.

Alaska was ceded to us in 1867 without any treaty covenants for future admission as a State. The Constitution and Federal laws have not been made extended over it as chroumstances gradually required It is an unorganized territory, governed directly from Washington (U. S. Rev. Stat., Sec. 1,254). Physically it is foreign territory, its nearest point being 409 miles and its furthest point 2,400 miles from Seattle. The Aleutian Islands extend even into the geographical limits of another continent. For thirty-two years a few judicial and executive, but no legislative, functions of government have been conferred upon the inhabitants "Congress," said Judge Dawson, "could confer upon Aleaka such powers, judicial and executive, as they deemed most suitable to the inhabitants. It was unquestionably within the Constitutional power of Congress to withhold from the inhabitants of Alaska the power to legislate and make laws" (29 Fed. R., 205). It is an unorganized territory, governed directly

The opponents of expansion urge, however, gress. The opponents of expansion urge, however, that every foot of soil acquired by this Nation is impressed with a trust or franchise of Statehood, and that the Constitution prohibits its acquisition except for such ultimate purpose. The permissive language of Article IV, Section 3, is construed as mandatory. It is said to be unconstitutional to hold territory, even temporarily, except "in a state of pupilage," as Judge Bradley expressed it, in preparation for eventual Statehood.

### DRED SCOTT CASE.

even by his own clear and logical utterances in other cases, was not law when uttered and is not law to-day.

Sixth—An exhaustive investigation of the writings and speeches of the founders of our Government and a scrutiny of the proceedings attending our acquisition of the Northwest. Louisiana and Florida Territories establish beyond dispute the historic maccuracy of Judge Taney's assertion that a trust or franchise of Statehood was intended to be impressed upon all newly acquired territory. Edmund Randolph submitted to the F-deral Convention the first propositions relative to new States and Territories. Madison offered amendments, and then the present language was introduced into the Constitution on the motion of Gouverneur Morris. During the controversy over the Louisiana cession in 1803 he was appealed to for information in regard to the meaning of the third section of the Fourth Article. He answered: "I am very certain I had it not in contemplation to insert a decree de coercendo imperio in the Constitution. I knew then, as well as I do now, that all North America must at length be annexed to us." (3 Mor. Writ. 185.) A few days later he again repiled: "I mistook the drift of your inquiry, which substantially is whether Constenses can admit, as a new State, territory which did not belong to the United States when the Constitution was made. In my opinion, they cannot. I always thought, when we should acquire Canada and Louisiana, it would be proper to govern them as pravines, and allow them no voice in our councils. In wording the third section of the Fourth Article I went as far as circumstances would permit to establish the exclusion." (3 Mor. Writ. 182.)

ANTI-EXPANSIONISTS' CHANGED ATTITUDE.

ANTI-EXPANSIONISTS CHANGED ATTITUDE. The opposition to acquiring Louisiana was based upon the treaty covenants guaranteeing ultimate Statehood. No opposition developed to acquiring and helding per se territories or dependencies. That right seems to have been assumed without discussion (Story, Constitution, Section 1,286). The resolution of the Massachusetts Legislature is one of many similar public expressions: "The annexation of Louisiana to the Union transcends the Con-

of many similar public expressions: "The annexation of Louisians to the Union transcends the Constitutional power of the Government of the United States. It forms a new confederacy to which the States united by the former compact are not bound to adhere" ("Life of Quincy," p. 295. The Supreme Court has long since overruied these objections. I cite them merely to show that at the beginning of the century anti-expansionists acknowledged the Nation's right to expand, insisted that new to ritory be governed permanently as such, and objected to its ultimate admission to Statehood. At the close of the century anti-expansionists deny our right to expand, if territory be governed permanently as such, and insist that all acquisitions be converted into States.

Both legal and historic precedents are thus established for governing new acquisitions as organized or unorganized territories, directly or indirectly, temporarily or permanently; and all such questions are political, subject to the discretion and power of Congress, and foreign to the jurisdiction of the Constitution and courts.

V. Civil Rights and Political Status of Inhabitants.—The civil rights and political status of inhabitants of ceded territory are those guaranteed by treaty and conferred by Congress. They acquire no rights under our Constitution and Federal statutes, exproprio vigore. The Constitution makes statutes, exproprio vigore. The Constitution makes statutes are political status of the land. (Art. VI. Sec. 2.) Treaties, as Chief Justice Marshall held, are obligatory upon the people of the United States (I. Pet., 340; and binding "as a Constitutional law." (IS How., 657; 13 How., 272.) The pending treaty with Spain provides: "The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States of the territories hereby ceded to the United States of the ceded territory.

CONSTITUTION AND STATUTES NOT OPERA-TIVE.

### CONSTITUTION AND STATUTES NOT OPERA-TIVE.

Originally the Constitution was operative in the thirteen States which ratified the document. (Art. VII. Sec. 1.) As new States were admitted, the VII. Sec. 1.) As new States were admitted, the Constitution became operative therein ex proprio vigore, even if, as in the case of Texas, it had not previously been extended over the annexed territory. 043 U. S., 69.) The geographical limits of Federal statutes are the National boundaries on the day of enactment. If our domain is expanded, our statutes are not ex proprio vigore expanded also. Statutes possess no innate power of expansion. The Dingley tariff, for instance, is limited strictly to the area of the United States as it existed July 24, 1897. To make it operative over Porto Rico, the Philippines or a single foot of new territory a special act extending it is necessary. Even when new States are admitted, two statutes are required—one

admitting to Statehood, and hence to the rights of the Constitution, the other extending our laws over the admitted territory. The thirteen original States were a mere fringe along the Atlantic. By conquest, annexation and purchase, within a hundred years we expanded our territory on this continent over 3,250,090 square miles, and over all this vast domain, with the exception of Alaska, the Constitution and laws of the Union have been made operative by more than a hundred special acts of Congress. Prior to 1860 there was no uniformity of legislative expression, but every organized Territory their existing and every Territory subsequently organized became subject to the following section of the Revised Statutes: "The Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized Territories and in every Territory hereafter organized as elsewhere within the United States" (Section 1889).

In an early case Chief Justice Marshall decided that territory annexed did not ipso facto derive rights from the Constitution. Its only rights, he said, were those "stipulated in the treaty." or granted by "its new master." (I Pet., 542.) Mr. Justice Nelson in a subsequent case, suggested a potent reason therefor. Territories "are not," he said, "organized under the Constitution." "They are the creations exclusively of the legislative department of the Government, and subject to its supervision and control." (I How., 252.) If Territories are neither created nor organized nor supervised under authority of the Constitution, how can it be urged that they acquire rights from the Constitution expensions exclusively after the Constitution expensions as to Government, and subject to its supervision and control." (I How., 252.) If Territories are neither created nor organized nor supervised under authority of the Constitution, how can it be urged that they acquire rights from the Constitution expensions as to Government and subject to its supervision organi

### NO INALIENABLE RIGHTS

Not only are the Constitution and laws not op erative, but Congress, in creating, organizing and supervising Territories, is not bound to grant the inhabitants any of our so-called "inalienable rights," not even those enumerated in the Constitution and its amendments, and commonly called the "Bill of Rights." This principle was distinctly announced by the Court in an elaborate opinion in the Mormon Church case (135 U. S., 42), the consensus of all the authorities sustaining the principle that neither the letter nor the spirit of the Constitution is operative in Territories without the specific act of Congress, Although this doctrine may startle humanitarians, it was reflerated with approval by Mr. Justice Harlan in a decision of the Supreme Court on April 25 last (170 U. S., 249). Ex-Senator Edmunds's recent statement is not necessarily in conflict with these views. "The Constitution," he said, "does operate and have full force in our Territories in the respects that affect the personal and civil rights of all." That is unqualifiedly true of every organized Territory since 1850. The Constitution has been specifically made operative therein, For forty-nine years the Inhabitants of Arizona and New-Mexico have enjoyed the same "personal and civil" rights under the Constitution as the inhabitants of New-York. But if Senator Edmunds intends his statement to apply to Alaska or Porto Rico or the Philippines, or any other unorganized territory over which the Constitution and Federal statutes shall not have been specifically extended by Congress, he is opposed by uniform decisions of the Supreme Court. The inhabitants of ceded territory, therefore, acquire no rights from the Constitution, Federal statutes or treatles, except such as are specifically granted. This principle has been overloaded in all pending discussions, but its logical application will solve the most perplexing problems of expansion.

First—It is urged that the inhabitants of ceded territory possess implied rights to a republican form of government. Even our Constitution arrantees only "to every State in this Union a republican form of government." (Art. IV. Sec. 4) It guarantees only "to every State in this Union a republican form of governme rights," not even those enumerated in the Consti-tution and its amendments, and commonly called

Second-Taxation without representation is an equally fallacious doctrine. In 1820 Chief Justice Marshall decided that the power of Congress to tax the Territories as well as States, irrespective of repreretritories as well as States, "If it were true," he said, "that according to the spirit of our Constitution the power of taxation must be limited by the right of representation, whence is derived the power to lay and collect duties, imposts and excises?" (5 Wheat, 325)

Third-Inhabitants of the States of the Union have a dual citizenship, State and Federal. Art. IV, Sec. 2, guarantees to "the citizens of each State all the privileges and immunities of citizens of the several States." But this interstate citizenship is granted only to citizens of a State, not to citizens of the United States. There is no citizenship of a granted only to citizens of a State, not to citizens of the United States. There is no citizenship of a Territory, and the only citizenship Congress can confer is National. (92 U. S., 542.) The Four enth Amendment provides that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States." Children of ambassadors and consuls born here are not "subject to our jurisdiction," and do not become citizens, 16 Wall., 73.) "This section." said the Supreme Court, "contemplates two sources of citizenship and two sources only, birth and naturalization" (12 U. S., 101, 169 W. S., 702.) Persons may be naturalized either individually under the naturalization acts, or "collectively," as the Court explained, "by the force of a treaty by which foreign territory is acquired." (112 U. S., 162.) Inhabitants of Porto Rico and the Philippines not being naturalized, and the pending treaty not providing for the naturalization of either natives or Spanish subjects, it follows that they can only become citizens by a specific act of Congress.

The pending bill for Hawall contains such naturalization provisions. The only other source of American citizenship is birth, and that must be within American territory over which the Constitution and laws shall have been specifically extended. No Constitution, no Fourteenth Amendment; hence no citizenship by birth. Therefor, if Congress ratifies the treaty and does no more, neither present nor future native inhabitants will be endowed with Federal citizenship.

CAN PROHIBIT IMMIGRATION.

(4.) The inhabitants of ceded territory, not being citizens, will have no right to immigrate to this country. Their rights will be no more nor less than those of allens of like races immigrating from any foreign land. The Chinese in the Philippines any foreign land. The Chinese in the Philippines and Hawaii will be excluded absolutely under our Chinese Exclusion acts. (130 U. S. 581.) Malays, constituting a considerable proportion of the Filippinos, being neither black nor vellow, but brown, the fifth subdivision of the human race, can be excluded as absolutely as the Chinese. It has been repeatedly suggested by the Supreme Court that the thirteenth, fourteenth and fifteenth amendments apply only to whites and blacks and not to Chinese, and hence Malays. (16 Wall., 73: 100 U. S., 306: 112 U. S., 161; 21 Fed. Rep., 209; 5 Sawy., 155; 71 Fed. Rep., 274: 169 U. S., 667.) White and black inhabitants migrating to this country can be admitted on the same terms and no other as white and black inmigrants from any foreign land. Citizenship and that alone prevents exclusion. Any United States citizen, whatever his race or origin, may under protection of the fourteenth amendment reenter the United States and pass from one State to another, and Federal or State governments cannot deny him that right except in punishment for crime. (21 Fed. Rep., 30; 130 U. S., 581; 169 U. S., 649.)

NO CHEAP LABOR.

# NO CHEAP LABOR.

Hence, unless Congress confers citizenship, Caucasians and negroes will be admitted under our im migration laws, while Mongolians and Malays may be debarred absolutely, and threatened incursions of cheap labor will not imperil the interests of Ameriheap labor w

# NO UNIFORM TARIFF.

(5.) In construing the provision of the Constitution that "all duties, imposts and excises shall be uniform throughout the United States" (Art. I. Sec. 8). Chief Justice Marshall in 1820 defined. "United States." "Does this term," he said, "des-'United States. Does his term, a can't can't grate the whole or any particular portion of the American empire? Certainly this question can admit but of one answer. It is the name given to our great Republic, which is composed of States and Territories. The District of Columbia or the territory west of the Missouri is not less within the United States than Maryland or Pennsylvania' (5 Wheat. 219). In its ultimate analysis it included all the land owned by the Nation in 1820. It includes all the land owned to-day—even Alaska and Hawani. It will include every foot of soil that may be ceded by the pending treaty. The Islands will no longer be a part of Spain; they will not be independent; they will be ours, ceded, annexed, their very so'l forming a constituent portion of the physical area of the United States. Our National entity is coterminous with our physical domain, and will any one assert that our physical domain, is not coextensive with our Nationel entity? Judge Marshall's views are thought to favor free trade. It is assumed that the uniform tariff provisions of the Constitution will become operative and compel free trade within all our borders. But are not protectionists and free traders zealously quoting Marshall and Taney and Webster and Calhoun, while they overlook a principle which renders their dispute purely academic?

DINGLEY TARIFF INOPERATIVE. ignate the whole or any particular portion of the

# DINGLEY TARIFF INOPERATIVE

How will tariff regulations become operative? no provision in the treaty; hence that document does not apply. The Constitution and statutes do not operate ex proprio vigore; hence they statutes do not operate ex proprio vigore; nence they do not apply. We find ourselves again relegated to Congress. If it makes operative the Constitution and Dingley tariff, they will be operative—otherwise not. If it enacts new tariff laws, those laws will prevail. If, however, Congress ratifies the treaty and does nothing more, leaving the adjustment of tariffs to the President as a war power, such course is equally in Congressional discretion.

per cent on goods imported in American than in foreign bottoms. The Louislana treaty gave a simi-

per cent on goods imported in American than in foreign bottoms. The Louisiana treaty gave a similar reduction to French and Spanish merchantmen trading to New-Orleans, thus establishing lower duties there on French and Spanish imports than elsewhere in the Union. For eight years the Territory of Orleans had an easentially different tariff system from the rest of the United States.

Florida was ceded to us in 1819. After we had taken possession it was decided by the Treasury Department that goods imported from Florida before Congress had made our laws operative therein were liable to duty. "That is," said Chief Justice Taney, "aithough Florida had by cession actually become a part of the United States, and was in our possession, yet under our revenue laws its ports must be regarded as foreign until they are established as domestic by act of Congress." (9 How. 617.)

In 1846 the Mexican State of Tamaulipas was conquered by us. During our military and civil rule, there arrived at Philadelphia an American vessel cleared from Tampico, upon whose cargo duties were exacted as from a foreign country. The Supreme Court, sustaining the tariff, said: "There was no act of Congress establishing a custom-house at Tampico nor authorizing the appointment of a collector. The regulations the collector adopted were not those prescribed by law, but by the President in his character of Commander-in-Chief. The permit and coasting manifest granted by an officer thus appointed, and thus controlled by military authority, could not be recognized in any port of the United States, nor could they exempt the carko from the payment of duties." (9 How., 615.) Commenting generally upon this and other instances, Chief Justice Taney made this decision in this Court and the Circuit Courts, whenever the question came before them. And all of them maintain that under our revenue laws every port is regarded as a foreign one unless the custom-house from which the vessel clears is within a collection district established by act of Congress and the offi NO FREE TRADE.

New territory, therefore, may be acquired without becoming subject to the tariff provisions of our and laws. Sugar from Cuba and Hawali, tobacco from Cuba and Porto Rico, and the products of the Philippines and Ladrones will not be admitted duty free, unless Congress so de-termines. Hence the vast sums invested in our sugar and tobacco industries need not be imperilled, nor need colonial imports reduce our customs reve-nues or disturb our economic status

### . THE OPEN DOOR. Sixth-The commerce of our Territories with for-

eign States involves the international trade problem of the "open door," The President's recent proclamation to the Filipinos has been misunderstood. "All ports," he says, "will be opened to the commerce of all friendly nations. All goods will be admitted upon payment of such duties and other charges as shall be in force at the time of the importation." If no duties are in force, none will be exacted. If Dingley tariff duties or any other exist, they must be paid. This is no "open door," nor even free trade. It is, moreover, only a mi tary order, and may at any time be rescinded by the President. But when Congress makes "rules and regulations" for the new Territory, what then If it should extend our Constitution and laws over the islands, free trade would then, as now, prevail within all our borders, and theoretically the Ding-ley tariff between us and the rest of the world, the uniform tariff clause of the Constitution being operative. Congress would have no more authority perative. Congress would have no mo admit English goods free at Manila operative, Congress would have no more authority to admit English goods free at Manila than at New-York or Philadelphia. It must not be forgotten, however, that such action, while conclusive within our boundaries, is not final in our international relations. The President and Senate have under the Constitution unlimited power to make trade in fits entirety, we must continue in the future, as in the past, to regulate our open doors by treaty and not by statute. As matter of fact, there has been no uniformity of tariff with foreign nations since our Government began. The "favored nations" clause has not prevented such treatles, for nations have uniformly ignored it in their trade wars. A trade war now exists between the United States and every European nation in the Orient except England. If England permits us to trade in China and India, our treaty-making power has authority to permit England to trade in the Philippines; if other European Powers exclude us from their Asiatic ports, our treat—making power, by refusing discriminating tariffs, can practically exclude them from the Philippines. There is no constitutional objection to giving Spain the preferential dutles provided in Article IV of the pending treaty; and, if policy dictates, the President and Senate can extend similar discriminations to our trade allies, and refuse them to nations waging a tariff war against us.

EXPANSION DUE TO THE PRESS.

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EXPANSION DUE TO THE PRESS.

During the last year the American people have resolved upon a most momentous policy—to expand their continental bounds, acquire foreign territory, and take their place among nations as a dominant world Power. Expansion is no longer a theory, but a fact. To the press of this country more than to any other aggregate intellectual force must be ascribed the development of this National policy, and for services thus rendered no tribute of praise can be unmerited. The pending treaty will soon be ratified and in practically its present form. As Senator Gray tersely remarked, "it will merely put us in control of the situation." Then will confront Congress the gravest problems of the century. We have never legislated for barbarians in the Orient, nor enacted municipal laws for Malays, nor adjusted our institutions to Asiate civilization, Old principles must be applied to new conditions. Congress shares the general confusion of public thought, distrusts its own prerogatives, and while possessing absolute power, yet daily discusses its praise can be unmerited. The pending treaty will soon be ratified and in practically its present form. As Senator Gray tersely remarked. "It will merely put us in control of the situation." Then will confront Congress the gravest problems of the century. We have never legislated for barbarians in the Orient, nor enacted municipal laws for Malays, nor adjusted our institutions to Asiate civilization. Old principles must be applied to new conditions. Congress shares the general confusion of public thought, distrusts its own prerogatives, and while possessing absolute power, yet daily discusses its limitations under the Constitution and Federal statues.

# DUTY OF THE AMERICAN BAR.

Now arises the opportunity of the American bar. Now is its time for action. It should emulate the patriotic services of the press; its counsel is imperatively needed; its advice will supremely benefit

the nation.

What more vital issues can engage the attention What more viral issues can engage the attention of this association? What discussions can be more in harmony with its spirit and traditions? In all crises of our history the bar of New-York, by profound learning, strength of argument and splendor of eloquence, has beneficently influenced the destiny of the nation. Let us not now stand quiescent. Let us perform our full fluty, and as "counsel learned in the law" advise the people and their representatives to a wise and just solution of these momentous problems.

Other papers read to-day were: "Methods of Legal Education in the State of New-York," by Clarence D. Ashley; "Legislative Competition for Corporate Capital," by Charles F. Bostwick: "The Constitutionality of Inheritance Tax Laws," by Christopher G. Tiedman, of Brooklyn, and "Interstate Crime and Interstate Extradition," by Wilbur Larremore, Editor of "The New-York Law Jour-PEACE CONFERENCE APPROVED.

William Barnes, of Albany, introduced a resolution indorsing the proposition to hold an international disarmament congress at St. Petersburg, and asking the President of the United States to appoint as delegates to the Congress ex-President Harrison, ex-President Cleveland and ex-Vice-President Morton. It was adopted unanimously Other important resolutions adopted were:

Mr. Lovett's, authorizing and empowering the president of the association to appoint a committee to represent the bar before the Legislature in the matter of legislation pertaining to the ilcensing of stenographers, with instructions to the committee to oppose such a measure in the name of the association.

ciation.

Mr. Flero's, that the Committee on Law Reform be directed to prepare and present to the Governor and Legislature a memorial asking the appointment by either the Governor, the Chief Judge of the Court of Appeals or the Justices of the Appellate Division of a new commission, which shall have exclusive charge of the matter of code revision, etc., to serve without compensation.

### ELECTION OF OFFICERS. These officers were elected for the coming year:

President, W. S. Logan, of New-York; vice-presidents: First District, Louis Marshall; Second, Macdents: First District, Louis Marshall, Second, Mac-Grane Coxe: Third, Clarence E. Bloodgood; Fourth, Richard L. Hand; Fifth, Nevada N. Stranahan; Sixth, John B. Stanchfeld; Seventh, James M. E. O'Grady, Elighth, Timothy E. Elisworth; secretary, Prederick E. Wadhams; corresponding secretary, L. B. Proctor; treasurer, Henry A. Peckham.

### THE PIGEON ROOST INDIAN MASSACRE. EFFORT TO SECURE A MONUMENT FROM INDI-

ANA LEGISLATURE FOR THE VICTIMS Scottsburg, Ind., Jan. 18.—Senator Joseph H.

Congress. If it makes operative the Constitution and Dingley tariff, they will be operative—otherwise not. If it enacts new tariff laws, those laws will prevail. If, however, Congress ratifies the treaty and does nothing more, leaving the adjustment of tariffs to the President as a war power, such course is equally in Congressional discretion.

TARIFF PRECEDENTS.

These principles have been applied on several occasions in our history. Louisians was ceded in 1802; Orleans Territory was granized therefrom in 1804 and in 1812 it was admitted as the State of the louisiana. Our tariff imposed a lower duty by 25

Scottsburg. Ind., Jan. 18.—Senator Joseph H. Shea, of this city, will introduce in the Legislature ability, will introduce in the Legislature ability ability, will introduce in the Legislature ability ability ability.

# NOTICE!

LA GRIPPE STILL RAGING

Diphtheria and Scarlet Fever Prevalent. The Importance of Household Disinfection.

Careful investigation shows that the majority of fevers and diseases of a zymotic nature can be traced to the gases from sewers, or the gases germinated and exhaled from fermenting sewage and noxious fecal matter in waste pipes within houses. Imperfect plumbing and filthy drain pipes are active promoters of disease, especially during cold weather, when, the house being closed and heated, the poisonous gases are drawn into the living rooms and there retained.

Thorough ventilation and the continuous use of a reliable disinfectant is essential. For all purposes of household disinfection, the solution known as Platt's Chlorides has proven the most reliable and economical. This is an odorless liquid sold in quart bottles by all druggists, by many high-class grocers and housefurnishing establishments. It is colorless, and when diluted and sprinkled about leaves no stain or smell, while it instantly removes any foul odors. If a few spoonfuls be poured into the traps of the water closets, wash basins and sinks, the last thing at night, all gases that may arise will be neutralized, and the disinfectant by passing through the pipes in the morning purifies all it comes in contact with.

comes in contact with.

By many careful families this disinfectant is continually used throughout the year, and their freedom from disease testifies to its virtue, but the vast multitude neglect all precautions, and disinfectants are ignored till sickness breaks out and the physician arrives.

### Important-Cantion.

"Platt's Chlorides" is sold in full quart bottles, entirely covered with a yellow wrapper, on which is printed plainly "Platt's Chlorides," with general directions for use. A strip Trade-Mark tabel extends over the cork and down the neck of the bottle.

Because of fts value and universal sale many imitations have sprung up. Some are called "Just as good"—some "Just the same." Do not be deceived. "Platt's Chlorides" has no equal, and one bottle of it contains more real disinfecting power than six to ten bottles of the imitations.

Magnificent mink capes, 36 in. long, tail border, high storm collar, elegantly finished, formerly marked \$400, will sell for \$250; others formerly \$300, will sell for \$200; \$150 capes reduced to \$100; \$100 capes reduced to \$65; \$75 capes reduced to \$50; entire stock Capes, Coats and Collarettes marked down from 25 to 33 per cent. C. C. Shayne, West 42d

### DAMAGE BY FLOOD IN CLEVELAND.

PORTION OF A COSTLY NEW BRIDGE SWEPT AWAY-NARROW ESCAPE OF WORKMEN.

Cleveland, Jan. 18.-Early this morning a dam under the Wilson-ave, bridge gave way, letting out a body of water a mile and a half long, hundreds of feet wide, and, in places, 25 to 30 feet deep. The break in the dam allowed torrents of water to pour down on the flats below. Along the line of the flood were the big plants of the Standard Oil Company, the Cleveland Paper Mills and other manufacturing plants. Only a few persons lived in the track of the flood and they were all warned

in the track of the flood and they were all warned and sought safety on high ground.

The cause of the flood was the recent heavy rains, the melting snow from the hillsides and a pond of several acres overflowing. At 3 o'clock the right pier of the bridge fell. The Wilson-ave, bridge was a structure 700 feet long, and had been built only a few months. It cost \$350,600.

Shortly after 10 o'clock the sixth support of the bridge gave way. The structure sagged, and then, with a tremendous report, snapped in two. About 150 feet of the bridge formed an incline plane to the ground.

the ground.

The break in the dam occurred while thirty men were at work in the artificial canal being sunk by the city engineers to allow the pent-up water to find a gradual and safe outlet. These men had a narrow escape for their lives, with not a second to

# MONEY ORDER CLERK MISSING.

HIS SUPERIORS WILL NOT TALK ABOUT HIS AC-COUNTS-HAD BEEN TWO YEARS IN

THE POSTOFFICE. Sherburne C. Van Tassel, who for the last sixteen years has been in the employ of the Govern-ment and for the last two years has been em-ployed as a money order clerk in the Madison Square branch of the Postoffice, is missing. Superintendent Clark, of the Madison-ave branch of the Postoffice, declined to say whether or not the missing man's accounts were all right. He would only say that Van Tassel had not been at his deak for several days. When other inquiries were made for several days. When other inquiries were made he referred the inquirers to Postmaster Van Cott. The latter in turn referred them to Inspectors. Wheeler, who refused to give out any information about the case.

Van Tassel's home is in Yonkers. He is fifty-five years old. It was said late yesterday afternoon that a warrant had been issued for his arrest for the alleged embezzlement of \$246, but no confirmation of this statement could be obtained.

# AFTER-DINNER SPEECHES BY TELEPHONE.

MEMBERS OF FIVE SOCIETIES IN AS MANT CITIES TO LISTEN TO THE SAME SPEAKERS.

Chicago, Jan. 18 .- "The Tribune" says that the local societies of the Massachusetts Institute of Technology of Chicago, Boston, New-York, Phila-delphia and St. Louis will hold their annual banquets on the night of February 2, and only one toastmaster will be required to preside over the five different banquets. The five different banquet halls will be connected by long distance telephones, so as to make it possible for each society to participate

in the other's enjoyment.

Speeches from Governor Roosevelt, Thomas A. In the other's enjoyment.

Specches from Governor Roosevelt, Thomas A.
Edison and others will be heard in each of the banqueting halls. At each plate, beside the wine
glasses and knives and forks, will be placed a tiny
oblong telephone receiver, and immediately after
the punch has been served the diners, by holding
the little insirument to their ears, will listen to
after-dinner specches hundreds of miles away.

It was the Northwestern, or Chicago, Society of
the Institute which conceived the idea of connecting by long distance telephone the five different societies and or inviting to be present in spirit such
men as Roosevelt, Edison, Mayor Quincy of Boston,
Governor Wolcott and others. The Northwestern
Society's banqueting place will be the University,
and its president or vice-president will be the toastmaster of the unique entertainment. At his elbow
will be the transmitter for the purpose of calling on
and introducing the long-distance speakers.

The American Telephone and Telegraph Company,
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# TRANSATLANTIC TRAVELLERS.

Among the passeng rs who arrived yesterday the steamer Friesland from Antwerp were Count G. De Lichtervelde, Belgian Minister to the United

G. De Lichterveide, Belgtan Minister to the United States; Harry Faber, Pierre Paul Gay, the Rev. Jean Kichen, Gustave Toussaint and Samuel A. Wood, ir.

Among the passengers who arrived last night on the White Star Line steamer Teutonic from Liverpool and Queenstown were B. N. Baker, president of the Atlantic Transport Line; H. Danneburg, C. J. Dentex Bondt, A. B. Duncan, H. Gillig, Baron De Leyssac, W. J. P. Monckton, Major F. H. Morris, A. B. Walker, A. S. Williams and C. H. Mazewell Trainor, British Consul in Guatemala.